

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

CHARLES D. JURBALA, Plaintiff	: : : : : : :	CIVIL NO. 3:14-CV-1238
v.	:	(JUDGE NEALON)
UNITED STATES OF AMERICA, Defendant	: :	(MAGISTRATE JUDGE CARLSON)

MEMORANDUM

On June 26, 2014, Plaintiff, Charles D. Jurbala, an inmate currently confined at the United States Penitentiary in Coleman, Florida, filed a complaint pursuant to 42 U.S.C. § 1983. (Doc. 1). On October 27, 2014, Defendant filed a motion to dismiss and a corresponding brief in support. (Docs. 13 and 14). On November 12, 2014, Plaintiff filed a response and brief in opposition to the motion to dismiss. (Docs. 16 and 17). On November 26, 2014, Defendant filed a reply brief. (Doc. 19). On January 29, 2015, Magistrate Judge Martin C. Carlson issued a Report and Recommendation (“R&R”), recommending that Defendant’s motion to dismiss the complaint be denied without prejudice to the presentation and renewal of the statute of limitations of the Federal Tort Claims Act (“FTCA”) claim at trial or in an evidentiary hearing. (Doc. 21).

Objections were due by February 17, 2015. (Id.). Defendant has not filed any objections. For the reasons set forth below, the R&R will be adopted. The

motion to dismiss will be denied without prejudice, and the matter will be remanded to Magistrate Judge Carlson for further proceedings, including an evidentiary hearing to resolve any factual disputes and the statute of limitations affirmative defense.

Standard of Review

When neither party objects to a magistrate judge's report and recommendation, the district court is not statutorily required to review the report, under de novo or any other standard. Thomas v. Arn, 474 U.S. 140, 152 (1985); 28 U.S.C. § 636(b)(1)(C). Nevertheless, the Third Circuit Court of Appeals has held that it is better practice to afford some level of review to dispositive legal issues raised by the report. Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987), writ denied, 484 U.S. 837 (1987); Garcia v. I.N.S., 733 F. Supp. 1554, 1555 (M.D. Pa. 1990) (Kosik, J.) (stating "the district court need only review the record for plain error or manifest injustice"). In the absence of objections, review may properly be limited to ascertaining whether there is clear error that not only affects the rights of the plaintiff, but also seriously affects the integrity, fairness, or public reputation of judicial proceedings. Cruz v. Chater, 990 F. Supp. 375, 377 (M.D. Pa. 1998) (Vanaskie, J.). The district court may accept, reject, or modify, in whole or in part, the findings and recommendations contained in the report. 28

U.S.C. § 636(b)(1)(C); M.D. Pa. L.R. 72.3.

Discussion

In his complaint, Plaintiff alleges that his Section 1983 rights were violated when he contracted food poisoning from food tainted with salmonella that was served to him while he was housed at the United States Penitentiary in Canaan, Pennsylvania. (Doc. 1). Magistrate Judge Carlson issued an R&R providing the factual and procedural background of the case, the applicable standard of review for a motion to dismiss, and the exhaustion and FTCA statute of limitation standard of review, all of which are herein adopted. (Doc. 21, pp. 1-15). The Magistrate Judge concludes that, due to issues of fact and credibility, an evidentiary hearing is necessary to determine whether Plaintiff is entitled to equitable tolling of his claim under the FTCA. (Id. at 15-21). Ultimately, because there are factual issues that require resolution, Magistrate Judge Carlson recommends that the motion to dismiss be denied without prejudice, and that the matter be remanded to Magistrate Judge Carlson so that an evidentiary hearing can be scheduled and conducted in order to resolve any factual disputes and the statute of limitations affirmative defense. (Id. at 21).

After review, and in the absence of objections, because there is no clear error with Magistrate Judge Carlson's R&R, it will be adopted as such. Thus, the

motion to dismiss will be denied without prejudice, and the matter will be remanded to Magistrate Judge Carlson for further proceedings, including an evidentiary hearing to resolve any factual disputes and the statute of limitations affirmative defense.

A separate Order will be issued.

Date: March 17, 2015

/s/ William J. Nealon
United States District Judge